IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 21488 OF 2005

Date: 04.10.2005

BETWEEN:

T. Rajeswar

.... PETITIONER

And

1. The Municipal Corporation of Hyderabad, rep. by its Commissioner, Tank Bund, Hyderabad, and others.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 21488 OF 2005

ORDER:

The Municipal Corporation of Hyderabad (MCH) initiated action under Section 456 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') in respect of the premises bearing Nos.4-4-353, 355, 356, 357, 373, 378 and 379 situated at Sultan Bazar. The husband of the third respondent is the owner of the premises. The petitioner is allegedly a tenant of the premises bearing No.4-4-372 and when there was interference by the landlords, the petitioner filed O.S.No.6330 of 2005 and obtained Ad-interim injunction restraining the third respondent and another in dispossessing the petitioner from the premises bearing No.4-4-372 admeasuring 25 Sq. yards situated at Sultan Bazar. In the meanwhile, alleging that at the behest of the third respondent and her husband, the first respondent initiated action under Section 456 of the Act against the petitioner, the present writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in issuing notice dated 28.9.2005 as illegal and arbitrary. Be it noted, by notice dated 28.9.2005

the petitioner was informed that he is required to remove the premises bearing No.4-4-372 and 373 within 24 hours to prevent the danger from the building, which is in a dilapidated condition. This notice is assailed on the ground that this is not preceded by any notice under Section 459 of the Act.

At the stage of admission itself, the learned Standing Counsel obtained instructions and also produced a copy of the notice issued to the husband of the third respondent under Section 459 of the Act in respect of the Mulgies/buildings, except the building, which is allegedly in possession of the petitioner being premises No.4-4-372. Based on such instructions, the learned Standing Counsel submits that a portion of the building was already collapsed and to prevent further danger to the building the first floor of the premises was removed. He also submits that the petitioners premises bearing No.4-4-372 is situated in the ground floor of the building and it was found blocked. Therefore, the order under Section 456 of the Act was served.

After hearing the learned counsel for the petitioner and learned Standing Counsel for the MCH this Court is of the considered opinion that the MCH has acted fairly and properly in taking immediate necessary action to prevent further danger from the building, which is in dilapidated condition, and a part of which was already collapsed. Insofar as the petitioner's premises is concerned the Corporation has issued straight away an order under Section 456 of the Act without issuing any notice under Section 459 of the Act. Therefore, the petitioner is given liberty to file appropriate representation/explanation without waiting for any notice under Section 459 of the Act, within a period of one week from today. It shall be open to the petitioner to raise all the grounds before the first respondent. After considering such representation, the first respondent shall take necessary decision in the matter and pass appropriate orders under Section 456 of the Act in respect of the Mulgi/premises bearing No.4-4-372, Sultan Bazar, which is allegedly in possession of the petitioner. Till this exercise is completed, if the petitioner's premises is still intact, the Municipal Corporation may not demolish the same.

The Writ Petition, with the above observations, is accordingly disposed of at the admission stage.

_____

(**V.V.S. RAO, J.)**

4th October, 2005

Note: C.C. tomorrow.

B/o

Js.